

Appl. No. 09/485,650
Atty. Docket No. CM1817
Amendment dated 11/15/04
Reply to Office Action of 08/13/2004
Customer No. 27752

REMARKS

Claims 1, 13, 14, 16, 17 and 20 – 31 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 U.S.C. § 103(a) Over Ghosh in view of Cuperus

Claims 1, 13, 14, 16, 17 and 20 – 31 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,858,948, hereinafter referred to as "*Ghosh*", in view of WO 95/35362, hereinafter referred to as "*Cuperus*". Applicants respectfully traverse this rejection on the basis that *Ghosh* is "subject matter" as defined under § 103(c), and as such cannot preclude patentability of the present invention under § 103(a).

35 U.S.C. § 103(c) states that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g), of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Ghosh qualifies as subject matter under § 103(c), because:

1. *Ghosh* constitutes subject matter developed by another person.

The *Ghosh* inventors include: Ghosh, Manohar, Gosselink and Watson, whereas the inventors of the claimed invention include: Bettiol and Thoen.

2. *Ghosh* qualifies as prior art under subsection (e) of 35 U.S.C. § 102

Ghosh was filed 22 April, 1997 and issued/published 12 January, 1999. The present application was filed on 14 August, 1997, after *Ghosh* was filed, but before *Ghosh* issued/published.

3. *Ghosh* and the claimed invention were both subject to assignment to the same person at the time the inventions were made.

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Ghosh and the claimed invention were commonly assigned to the Procter & Gamble Company.

Since *Ghosh* meets all of the subject matter requirements under § 103(c) it cannot preclude the patentability of the claimed invention under § 103(a). Therefore, Applicants respectfully request withdrawal of the §103(a) rejection.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application and allowance of pending Claims 1, 13, 14, 16, 17 and 20 – 31.

Respectfully submitted,

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